

ALAN LeBOVIDGE
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
P.O. Box 9550
Boston, MA 02114-9550

January 3, 2006

Senator Richard T. Moore
The State House, Room 111
Boston, MA 02133

Re: Webster Water and Sewer Debt Shift
Our File No. 2005-482

Dear Senator Moore:

This is in response to your letter regarding the Department of Revenue's oversight of the water and sewer debt shift. A taxpayer in the Town of Webster, which has adopted the option, asserts that the town is required to shift the debt costs onto residential taxpayers and that it is not doing so.

The shift is a special debt exclusion under Proposition 2½ that is adopted by the selectmen in a town, rather than by voter referendum. G.L. c. 59 §21C(n). As with any debt exclusion, however, the maximum amount the town can levy in any year is increased by the amount of the debt service payment due that year on the covered debt. User charges for the year must also be reduced by that amount, *i.e.*, that the excluded debt service cost cannot be included in the rate base. The effect is to shift the recovery of water and sewer debt service costs from customers based on their use of the service to taxpayers based on the assessed valuation of their properties.

Contrary to the taxpayer's claim, communities may shift all or part of their total water and sewer debt service, or just the residential share of that debt service. The statute provides in relevant part:

The local appropriating authority may, by accepting this paragraph, provide that taxes may thereafter be assessed in excess of the amount otherwise allowed by this section, solely for payment, in whole or in part, of water or sewer debt service charges, including debt service charges of an independent commission, authority or district and as part of any wholesale water and sewer charges, that the board or officer responsible for determining the water and sewer charges certifies were not in fiscal year nineteen hundred and ninety-three paid by local taxes; provided, however, that water and sewer charges shall be reduced by the amount of any such aggregate additional taxes assessed; and provided, further, that said additional taxes may be assessed on only residential real property as defined in section two A, notwithstanding the failure of the city or town to adopt a residential factor pursuant to section fifty-six of chapter forty, but subject to any subsequent adoption of such residential factor allowed by said section fifty-six; and provided, further, that if said additional taxes are assessed only on residential real property, aggregate residential water and sewer charges shall be reduced by the amount of any such additional taxes assessed. (Emphasis added).

Senator Richard T. Moore
January 3, 2006
Page Two

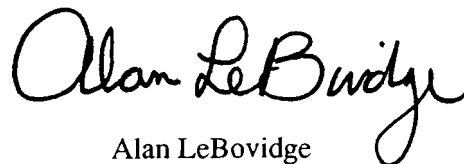
The language cited by the taxpayer is permissive. Read in context with the rest of the statute, it is clear that if the community chooses to shift just the residential share, it will increase the share of the tax levy borne by the residential class even if the community does not otherwise adopt a split tax rate under G.L. c. 40 §56 and that the commensurate rate reduction will be in residential water and sewer rates only.

According to our records, the Webster Board of Selectmen voted on July 27, 1998 to adopt a shift of \$1.7 million of the town's total water and sewer debt service, not just the residential share of the debt. The town has yet to set a tax rate for fiscal year 2006, but our records also show that the town did not take the special exclusion when it set its rate for fiscal year 2005.

As you know, the Department of Revenue must approve municipal tax rates. G.L. c. 59 §23. It also determines the maximum amount a community may levy under Proposition 2½. G.L. c. 59 §21D. The Department does not approve a tax rate unless the city or town has a balanced budget with a tax levy within that amount. You can be assured that all tax rates we approve for the Town of Webster, or any other municipality using the debt shift option, are in full compliance with the adopted shift, based on the annual debt service exclusion reported to us by local officials as part of the annual tax rate submissions.

If you need any further information, please do not hesitate to contact me again.

Sincerely,

A handwritten signature in black ink that reads "Alan LeBovidge". The signature is written in a cursive, flowing style.

Alan LeBovidge
Commissioner

AL:KC